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**IN THE
COURT OF APPEALS OF INDIANA**

WAYNE A. WHITE,

Appellant-Petitioner,

VS.

STATE OF INDIANA; INDIANA
FAMILY & SOCIAL SERVICES
ADMINISTRATION; REBECCA
DEWEESE; NANCY SHELTON;
AND DOES 1-100.

Appellees-Respondents.

[illegible]

No. 74A01-0605-CV-175

APPEAL FROM THE SPENCER CIRCUIT COURT
The Honorable Wayne A. Roell, Judge
Cause No. 74C01-0511-MI-453;
74C01-0512-MI-492

March 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Wayne A. White (White), appeals the trial court's grant of a Motion to Dismiss filed by Appellees-Respondents, the State of Indiana (State), Indiana Family and Social Services Administration (FSSA), Rebecca DeWeese, Nancy Helton, and Does 1-100 (Does), (collectively, Appellees).

We affirm.

ISSUE

White raises two issues on appeal, which we restate as the following single issue: Whether the trial court properly granted Appellees' Motion to Dismiss.

FACTS AND PROCEDURAL HISTORY

In the spring of 2005, White received notice from the FSSA that his food stamp allowance had been reduced and his Medicaid spend-down requirement had been increased. On May 19, 2005, White filed an appeal with the FSSA, requesting administrative review of both of these decisions. On September 16, 2005, the FSSA held an administrative hearing, and on September 27, 2005, the FSSA issued a decision in favor of the State on both issues. On November 3, 2005, the FSSA issued a Notice of Final Agency action on the matter, and affirmed its previous ruling.

On November 16, 2005, under Ind. Code § 4-21.5-5 *et seq.*, White filed a Verified Petition for Judicial Review, requesting judicial review of the FSSA's final decision,

affirming an increase in his Medicaid spend-down. This action was designated as Cause Number 74C01-0511-MI-0453. On December 16, White filed a second Verified Petition for Judicial Review, seeking judicial review of the FSSA's final decision, affirming the decrease in his food stamp allowance. This action was designated as Cause Number 74C01-0512-MI-0492. Thereafter, White moved the trial court to consolidate the two causes, and on January 5, 2006, the trial court did so.

On January 20, 2006, White filed a motion for an extension of time, which the trial court granted. On February 9, 2006, the FSSA filed a Motion to Dismiss the action, alleging that White failed to serve a summons to their agency or the Attorney General, in disregard of I.C. § 4-21.5-5-1. Additionally, the FSSA claimed that White failed to file the agency's record with the trial court within 30 days of his filing the petitions, also in disregard of I.C. § 4-21.5-5-1. On April 12, 2006, the trial court held a hearing on the FSSA's motion to dismiss. On April 17, 2006, the trial court granted the motion.

White now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

White argues that the trial court erred in granting the FSSA's Motion to Dismiss. Specifically, White contends that even if no summons was served to the FSSA or the Attorney General, neither party was prejudiced by the lack of a summons. Furthermore, White contends that his failure to timely file the agency's record with the trial court constituted excusable neglect on his part, as he suffers from numerous health problems. On the other hand, the Appellees claim that as a result of White's noncompliance with the statutory requirements for service of summons and filing of the agency's record with the

trial court, the trial court lost subject matter jurisdiction over the claims. Thus, the action was properly dismissed pursuant to Ind. Trial Rule 12(B)(1).

Primarily, jurisdiction embraces two essential elements: jurisdiction of the subject matter and jurisdiction of the person. *K.S. v. State*, 849 N.E.2d 538, 541 (Ind. 2006). Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings then before the court belong. *Id.* at 542. Lack of subject matter jurisdiction may be raised by the parties or the court at any time, including on appeal. *Hubbard v. Columbia Women's Hosp. of Indianapolis*, 807 N.E.2d 45, 50 (Ind. Ct. App. 2004), *reh'g denied*. A judgment rendered by a court lacking subject matter jurisdiction is void and may be attacked at any time. *Foor v. Town of Hebron*, 742 N.E.2d 545, 548 (Ind. Ct. App. 2001). The second type of jurisdiction, personal jurisdiction, comprises the court's power to bring a person into its adjudicative process and render a valid judgment over him or her. *In re Estate of Baker*, 837 N.E.2d 603, 608 (Ind. Ct. App. 2005). The assertion that a court lacks personal jurisdiction must be timely raised or it is waived. *State v. Omega Painting, Inc.*, 463 N.E.2d 287, 290-91 (Ind. Ct. App. 1984), *reh'g denied*.

As applicable to the case before us, in ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may consider the complaint, motion, and any affidavits or evidence submitted in support. *Hubbard*, 807 N.E.2d at 50. The standard of review for Ind. T.R. 12(B)(1) motions to dismiss is a function of what occurred in the trial court. *Id.* The standard of review is dependent upon: (1) whether the trial court

resolved the disputed facts; and (2) if the trial court resolved disputed facts, whether it conducted an evidentiary hearing or ruled on a paper record. *Id.*

If the facts before the trial court are not in dispute, then the question of subject matter jurisdiction is purely one of law and no deference is afforded the trial court's conclusion. *Id.* However, if the facts before the trial court are in dispute and the trial court conducts an evidentiary hearing, we give its factual findings and judgment deference. *Id.* When the facts are in dispute but the trial court rules on a paper record without conducting an evidentiary hearing, no deference is afforded the trial court's findings and judgment. *Id.* The ruling of the trial court is presumptively correct.

Here, the Appellees argued below that White's failure to serve the FSSA or the Attorney General with a summons deprived the trial court of subject matter jurisdiction. In our minds, failure to serve a summons would generally impact the trial court's personal jurisdiction over a party; however, a recent decision by this court stresses that what type of jurisdiction is deprived by lack of a summons is not entirely clear, but more importantly is not decisive in judicial review of administrative decisions. *See Volunteers of America v. Premier Auto Acceptance Corp.*, 755 N.E.2d 656, 659 (Ind. Ct. App. 2001) (ineffective service of process prohibits a trial court from having personal jurisdiction over a defendant); *Indiana State Bd. of Health Facility Administrators v. Werner*, 846 N.E.2d 669, 670-71 (Ind. Ct. App. 2006), *trans. denied*. Rather, in an action for judicial review of an administrative determination, compliance with statutory requirements is a condition precedent -- plain and simple -- not necessarily a condition precedent to any particular type of jurisdiction. *Werner*, 846 N.E.2d at 671. Further, it has been held that

a guiding principle of administrative law is that the failure to comply strictly with the jurisdictional requirements embodied in the statute providing for judicial review prevents a trial court from acquiring jurisdiction of the parties. *Id.*

In the instant case, the facts are not disputed. White neither served a summons on the appropriate parties, nor timely filed the agency's record with the trial court. Even though the record makes it clear that all parties were put on notice of White's petitions for judicial review despite the lack of a summons, we cannot reverse the trial court's grant of the Motion to Dismiss based solely on the argument that the Appellees are being overly "nit-picky" as far as procedure is concerned. In addition, we cannot ignore that White also failed to timely file the administrative record with the trial court. *See id.* at 670; I.C. § 4-21.5-5-13. Therefore, because White did not strictly comply with the statutes and it is well-settled that the time provisions contained within I.C. § 4-21.5-5 are mandatory and a condition precedent to a trial court acquiring jurisdiction to consider a petition for judicial review, we must affirm the trial court's dismissal of White's petitions. *See Werner*, 846 N.E.2d at 670.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly granted the Appellees' Motion to Dismiss.

Affirmed.

KIRSCH, J., and FRIEDLANDER, J., concur.